

EXHIBIT 9



STATE OF NEW YORK DEPARTMENT OF HEALTH

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Early Intervention Memorandum 1999-2

To: Early Intervention Officials
Providers of Early Intervention Services
Families
Other Interested Parties

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Subject: Reporting of Children's Eligibility Status Based on Diagnosed Conditions
with High Probability of Developmental Delay

This memorandum provides guidance on the manner in which children's eligibility status should be reported, and *subsequently recorded in the Kids Data Management System*. This information is applicable whether the results of a multidisciplinary evaluation indicate that the child is eligible for early intervention services based on a documented developmental delay *or* based on a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. This memorandum also provides guidance on the types of diagnosed conditions that are considered to have a high probability of developmental delay in very young children; and, the qualified professionals who can diagnose these conditions according to the practice acts of New York State.

Please note that this guidance is not a change in eligibility requirements under the Early Intervention Program. Rather, the goal of this guidance document is to improve the information about the population of children receiving services from the Early Intervention Program. Better information on the basis for all children's eligibility is essential to evaluating the program's effectiveness in identifying children as early as possible. Better information on each child's eligibility is essential to ensuring children receive high quality evaluations and appropriate early intervention services. Thus, whenever a diagnosis is made or becomes available, the information should be documented in the child's record and recorded in the KIDS Data Management System.

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Review of Eligibility Requirements Under the Early Intervention Program

Children's eligibility under the Early Intervention Program (EIP) can be established in one of two ways: (1) presence of a developmental delay which meets the state definition of developmental delay¹ or (2) a diagnosed physical or mental condition that has a high probability of resulting in developmental delay². In an effort to clarify conditions with a high probability of developmental delay, the EIP and Data Committee of the Early Intervention Coordinating Council (EICC) convened a group of expert clinicians to identify categories and types of diagnosed conditions that - when diagnosed in children under three years of age - have a high probability of resulting in developmental delay. A compendium of these conditions, including a description and the appropriate ICD-9 code, has been included in the Appendix A of this guidance memorandum. A table has also been included which describes those licensed and certified professionals who are permitted under state law to make such diagnoses under their scope of practice as defined in Education Law (Appendix B).

It is important to remember that although a diagnosed mental or physical condition with a high probability of developmental delay establishes the child's eligibility for the Early Intervention Program, all decisions about appropriate services, including

- types of services that are necessary to address the child's strengths and needs and the family's priorities, resources and concerns about their child's development;
- frequency, intensity, and duration of services; and,
- settings in which services are to be delivered

can only be determined by reviewing the results of the child's complete multidisciplinary evaluation and in collaboration with the full IFSP team.

Review of the Evaluation Process

A child's eligibility for the Early Intervention Program must be established by the approved, multidisciplinary evaluation team selected by the parent to complete the child's multidisciplinary evaluation, regardless of whether the child is referred as having:

- a suspected developmental delay only;
- a suspected diagnosis of a condition with a high probability of developmental delay; or,
- a diagnosed condition with a high probability of developmental delay.

When a child is referred as having *a suspected developmental delay*, the child's eligibility for the Early Intervention Program is established if a developmental delay as defined at 10 NYCRR Section 69-4.1(g) is documented by the multidisciplinary team. In

¹ 10 NYCRR Section 69-4.1(g)

² 10 NYCRR Section 69-4.1(h)

some instances, the child may have a developmental delay consistent with the state definition of developmental delay.

When a *diagnosed condition with a high probability of developmental delay* is suspected at the time of referral, or suspicion of such a condition emerges during the multidisciplinary evaluation, it is important to assist the family in obtaining an accurate diagnosis while also ensuring that an IFSP is developed within the forty-five day timeframe for children who are eligible based on a developmental delay. For example, a child may be referred with a suspected motor delay and demonstrate characteristics that constitute clinical clues for cerebral palsy during the evaluation process. If the multidisciplinary evaluation team determines that a child is experiencing a developmental delay which qualifies him or her for the Early Intervention Program, an initial Individualized Family Service Plan should be developed and may include a supplemental evaluation as appropriate to obtain a diagnosis. Under these circumstances, the multidisciplinary evaluation team and service coordinator should also work closely with the child's primary care physician and medical community in an effort to assist the family in obtaining an accurate diagnosis. If feasible within the forty-five day timeframe, the initial multidisciplinary evaluation team may also be expanded to include a professional qualified under the state practice acts to make an accurate diagnosis (for example, a physician or nurse practitioner with an appropriate area of specialty and competence).

When a child is referred *with a diagnosed condition with a high probability of developmental delay*, the approved multidisciplinary evaluation team must, with parental consent, obtain the documentation substantiating the diagnosis from the professional who made the diagnosis. This documentation may include appropriate medical records and/or the medical reports or summary reports from the diagnosing professional. The multidisciplinary evaluation team approved to evaluate children for the Early Intervention Program is then responsible for incorporating this information into the child's multidisciplinary evaluation report and summary.

To summarize, all children referred to the Early Intervention Program who are thought to be eligible, must, with parental consent, be evaluated by an approved evaluator. The multidisciplinary evaluation team may, with parental consent, screen a child to determine what type of evaluation, if any, is necessary *unless* the child has a diagnosed condition with a high probability of developmental delay.³ If a child has a diagnosed condition with a high probability of developmental delay, a screening is unnecessary and the multidisciplinary evaluation team should proceed with an evaluation with parental consent. The multidisciplinary evaluation is necessary to:

- determine whether a child is eligible for the Early Intervention Program;
- assess the status of the child's physical, cognitive, social-emotional, communication, and self-help development;
- identify areas of developmental strengths and needs; and,

³ 10 NYCRR Section 69-4.8(2)(i)

- determine the parent's resources, priorities, and concerns related to their child's development.

The complete multidisciplinary evaluation forms the basis for decisions about all aspects of the services included in the Individualized Family Service Plan to meet the child's developmental strengths and needs, and the priority, resources, and concerns of the family related to their child's development.

Upon completion of a multidisciplinary evaluation, the child's evaluator must prepare and submit an evaluation report that includes the following information: the names, titles, and qualifications of the persons performing the evaluation and assessment; a description of the assessment process; the child's responses; the family's belief about whether the responses were optimal; measures and/or scores that were used; and, an explanation of these measures or scores.⁴ In addition, the evaluation report must include a statement of the child's eligibility (a diagnosed condition with a high probability of developmental delay and/or developmental delay in accordance with the state definition of developmental delay)⁵. Early Intervention Officials should review the qualifications of the members of the multidisciplinary evaluation team to ensure that appropriately qualified personnel made the indicated diagnosis.

Please note that the diagnosed conditions with a high probability of developmental delay included in this guidance document do not constitute an exhaustive list of diagnosed conditions that may establish a child's eligibility for early intervention services. When an evaluator identifies a child as having a condition with a high probability of developmental delay not included in Appendix A, a clear explanation and supportive documentation from the medical research literature must be provided as to why the condition is considered to have a high probability of developmental delay. This information should be submitted as part of the child's multidisciplinary evaluation report.

It is recommended that the multidisciplinary evaluation team submit a summary form to accompany the evaluation report to assist in ensuring that data concerning the child's eligibility form are entered accurately in the Kids Data Management System. A suggested form is provided in Appendix C of this document.

1. What if a child is referred to the Early Intervention Program with a diagnosed condition with a high probability of developmental delay--should a multidisciplinary evaluation still be provided?

Yes. Children referred to the Early Intervention Program with a diagnosed condition with a high probability of developmental delay that connotes eligibility for the Early Intervention Program must have a multidisciplinary evaluation by an approved evaluator. The evaluation provides the basis for decisions about appropriate services to meet the identified needs of the child and family.

⁴ 10 NYCRR Section 69-4.8 (9)(ii)

⁵ 10 NYCRR Section 69-4.8(9)(iii)